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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,557	12/22/2004	Richard Smith	231/1/140	6781
170	7590	11/05/2008	EXAMINER	
RICHARD M. GOLDBERG			BECKER, DREW E	
25 EAST SALEM STREET				
SUITE 419			ART UNIT	PAPER NUMBER
HACKENSACK, NJ 07601			1794	
			MAIL DATE	DELIVERY MODE
			11/05/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/518,557	SMITH, RICHARD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Drew E. Becker	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 September 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 3-6,8,10-13,15,17,18 and 21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 3-6,8,10-13,15,17,18 and 21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/23/08 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 3, 18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 19946210.

DE 19946210 teaches a packaged product comprising dish-like soup container (page 2, line 1) covered with a sealant arrangement in the form of a lid which also acts as a top wall of the container (Figure 1, #1), apertures in the lid (Figure 1, #7), a member having a flap covering the apertures (Figure 1, #2), the member comprising a label layer and adhesive (Figure 1, #2 & 4), and regions of discontinuity in the form of a line of cuts or microperforations alternating with portions of material (Figure 1, #9a-b).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19946210 as applied above, in view of GB 2315256A.

DE 19946210 teaches the above mentioned concepts as well as tab-shaped flap which can be removed from the label by use of a curved line of perforations (page 9, line 20 to page 10, line 3). DE 19946210 does not recite converging cut lines to form a flap. GB 2315256A teaches a label comprising converging lines of cuts which form a flap (Figure 3, #22 & 24). It would have been obvious to one of ordinary skill in the art to incorporate the converging lines of GB 2315256A into the invention of DE 19946210 since both are directed to labels, since DE 19946210 already included a removable tab formed by a curved line of perforations (page 9, line 20 to page 10, line 3), since the converging lines of GB 2315256A provided a simple means for delineating a flap without having to use curved lines, and since DE 19946210 already taught using any other pattern of one or more weakened lines (page 10, lines 1-3).

6. Claims 3, 17-18, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuno [Pat. No. 5,989,608] in view of DE 19946210.

Mizuno teaches a method for providing a package by placing a sealant film over a container (Figure 7, #32 & 34), making a small aperture in the sealant film (Figure 7, #36), forming a product identification member including a label layer (Figure 7, #38), forming a flap member by use of a cut line (Figures 9A-B, #52b), applying an adhesive to the label layer (Figure 1, #54), the flap member covering the aperture (Figure 9B, #52b & 36), and the flap opening when pressure builds within the package (column 6, line 41-52). Mizuno does not recite a line of perforations delineating the flap. DE 19946210 teaches a packaged product comprising dish-like soup container (page 2, line 1) covered with a sealant arrangement in the form of a lid which also acts as a top wall of the container (Figure 1, #1), apertures in the lid (Figure 1, #7), a member having a flap covering the apertures (Figure 1, #2), the member comprising a label layer and adhesive (Figure 1, #2 & 4), and regions of discontinuity in the form of a line of cuts or microperforations alternating with portions of material (Figure 1, #9a-b). It would have been obvious to one of ordinary skill in the art to incorporate the line of perforations of DE 19946210 into the invention of Mizuno since both are directed to food containers, since Mizuno already had a cut line to delineate the flap (Figure 9A-B, #52b), and since the line of perforations used by DE 19946210 provided a more reliable opening which would be less likely to open prematurely.

7. Claims 4-6, 8, 10-13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuno, in view of DE 19946210, as applied above, and further in view of GB 2315256A.

Mizuno and DE 19946210 teach the above mentioned concepts. Mizuno and DE 19946210 do not recite a fold, score, or crease which serves as a hinge, two converging lines of cuts, or a backing layer with a release material. GB 2315256A teaches a label comprising a label comprising converging lines of cuts on three sides to form a flap pivoting about a hinge (Figure 3, #22 & 24) as well as a backing layer and release material (page 2, lines 23-35). It would have been obvious to one of ordinary skill in the art to incorporate the hinge, converging lines, and backing layer with release material of GB 2315256 into the invention of Mizuno, in view of DE 19946210, since all are directed to labels, since Mizuno already included a label flap with a cut line which hinged upward (Figure (A-B, #52b), since DE 19946210 already included a removable tab formed by a curved line of perforations (page 9, line 20 to page 10, line 3), since the converging lines of GB 2315256A provided a simple means for delineating a flap without having to use curved lines, since DE 19946210 already taught using any other pattern of one or more weakened lines (page 10, lines 1-3), and since the backing layer and release material of GB 2315256A provided a convenient and efficient means for storing, shipping, and applying the label.

***Response to Arguments***

8. Applicant's arguments with respect to claims 3-6, 8, 10-13, 15, 17-18, and 21 are have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1794